

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

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In the Matter of

:

BRENT M. WARNER,

: Case No. 91-492-C H

Debtor.

: Chapter 13

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ORDER DENYING MOTION FOR RELIEF FROM STAY

General Motors Acceptance Corporation's (hereinafter "GMAC") Motion for Relief From Stay came on for hearing on April 12, 1991. Debtor appeared by Michael L. Jenkins, Murray, Davoren & Jenkins, Attorneys at Law; GMAC appeared by Richard G. Book, Jones, Hoffmann & Hubner, Attorneys at Law; and, J. W. Warford appeared as the Chapter 13 Trustee. At the conclusion of the hearing, the court took the matter under submission upon a briefing schedule.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(G). The Court now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. The Debtor filed a petition for Chapter 13 relief on February 20, 1991.

2. Prior to filing for Chapter 13 relief in this Court, the Debtor's automobile, a 1989 Chevrolet Cavalier, was damaged in a motor vehicle accident and was considered a total

loss by the insurance company which insured the vehicle.

3. The insurance company issued a settlement check in the amount of \$10,735.00 in payment of the loss prior to the filing of this bankruptcy case. The check is now in the possession of the Debtor.

4. Movant, General Motors Acceptance Corporation (GMAC), is a holder of a first lien security interest in the automobile. The amount due and owing to GMAC pursuant to the installment sale contract exceeds the amount of the insurance settlement check.

5. The Debtor has proposed under its Chapter 13 plan to use the insurance proceeds to purchase another vehicle which would become substitute collateral for GMAC's lien.

6. GMAC filed a motion for relief from stay on March 18, 1991. It requests that the automatic stay be lifted so it may pursue all available remedies to obtain the insurance proceeds.

7. The Debtor filed an objection to the motion for relief from stay on March 25, 1991.

DISCUSSION

A request for relief from stay is governed by the following Code section:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under

subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or
- (2) with respect to a stay of an act against property under subsection (a) of this section, if
 - (A) the debtor does not have an equity in such property, and
 - (B) such property is not necessary to an effective reorganization.

11 U.S.C. § 362(d). The automatic stay is fundamental to the reorganization process and its scope is intended to be broad.

Small Business Admin. v. Rinehart, 887 F.2d 165, 168 (8th Cir. 1989). GMAC contends that since the vehicle and the subsequent insurance proceeds were fully encumbered by its lien interest, the insurance proceeds are not property of the estate.

The bankruptcy court is comprised of all legal or equitable interests of a debtor in property. 11 U.S.C. § 541(a)(1). What constitutes a legal or equitable interest of a debtor in property is broadly construed. See In re N.S. Garrott & Sons, 772 F.2d 462, 465-66 (8th Cir. 1985); In re Wegner Farms Co., 49 B.R. 440, 443 (Bankr. N.D. Iowa 1985). Property is not excluded from a bankruptcy estate merely because it is subject to liens or encumbrances. Matter of Hawkeye Chemical Co., 71 B.R. 315, 320 (Bankr. S.D. Iowa

1987). The proceeds from insurance policies are property of the estate. Id; see also In re Titan Energy, Inc., 837 F.2d 325, 329 (8th Cir. 1988) (insurance policy was property of estate).

GMAC has not set forth any "cause," § 362(d)(1), for lifting the stay. While the debtor may lack equity in the insurance proceeds, it is apparent the proceeds are necessary to an effective reorganization because they can enable the Debtor to obtain a replacement vehicle. § 362(d)(2)(B).

The distance, and apparent absence of public transportation, between the Debtor's home and place of employment make the availability of reliable transportation necessary for an effective reorganization.

IT IS HEREBY ORDERED that the motion for relief from stay is denied.

Dated this 11th day of September, 1991.

RUSSELL J. HILL
U.S. BANKRUPTCY JUDGE